

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

April 5, 2002

ORDER

CENTRAL MAINE POWER COMPANY  
Standard Rates for Energy and Capacity  
Purchases

Docket No. 2002-29

BANGOR HYDRO-ELECTRIC COMPANY  
Standard Rates for Energy and Capacity  
Purchases

Docket No. 2002-44

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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**I. SUMMARY**

On January 15 and January 17, 2002, Central Maine Power Company (CMP) and Bangor Hydro-Electric Company (BHE), respectively, filed their Standard Rates for Energy and Capacity Purchases (standard rates) and their Short-Term Energy Only (STEO) rates. See *MPUC Rules* Chapter 360, §§ 4(C)(3)(d)(i) and 4(C)(2)(b)(i). In this Order we hereby adopt the rates filed by CMP and BHE for the period March 1, 2002 through February 28, 2003 as the STEO rates for that period and the rates filed by CMP and BHE for the period March 1, 2002 through February 28, 2005 as the standard rates for that period. See *Attachment A, appended hereto*.

**II. PROCEDURAL HISTORY**

On January 15 and January 17, 2002, CMP and BHE, respectively, filed their standard and STEO rates.<sup>1</sup> These rates were filed pursuant to MPUC Rules, Chapter 360, §§ 4(C)(3)(d)(i) and 4(C)(2)(b)(i) and, as contemplated therein, were based on the prices obtained from the sale of CMP's and BHE's entitlements from contracts with Qualifying Facilities (QFs). On February 8, 2002, the Examiner in this proceeding issued a Notice of Proceeding. In accordance with Chapter 360, the notice set February 15, 2002 as the filing deadline for intervention and/or objection to the proposed rates.

On February 19, 2002, the Independent Energy Producers of Maine (IEPM) filed a Petition for Intervention and requested an exemption of the February 15<sup>th</sup> deadline to

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<sup>1</sup> CMP and BHE indicated that, in addition to the Commission, they also sent copies of their filings to the entities included on their pre-determined service lists, as required by Chapter 360.

object to the proposed rates. In its filing, the IEPM objected to CMP's and BHE's proposed STEO rates on the basis that "it is entirely possible that other linked bids were received that offered a higher price for the QF output."<sup>2</sup> On February 21, 2002, the Office of the Public Advocate filed a Petition for Intervention. By this Order, we grant the Public Advocate's Petition to Intervene. On February 26, 2002, we issued a Corrected Order Granting Exemption and Setting Schedule (corrected order). In this Order, we provided an opportunity for the IEPM to make additional argument in support of its objection. Specifically, the Corrected Order provided the IEPM an opportunity to address the following question as well as to provide additional comments:

Why should not our recent conclusion that "the accepted bid price for utility entitlements in the recent solicitation is consistent with their stand-alone market value," resolve any and all questions about whether the accepted linked entitlement bids are consistent with the market value of the utility entitlements?

Corrected Order, citations omitted. On February 28, 2002, the IEPM filed additional comments in support of its objection, and on March 5, 2002, CMP filed comments in response to the IEPM's filings. On March 7, 2002, the IEPM filed a reply to CMP's comments. On March 12, 2002, the Examiners in this proceeding issued an Examiner's Report. CMP filed comments in support of the Examiner's Report and the IEPM filed Exceptions to the Report.

### III. PARTIES' POSITIONS

#### A. IEPM's Objection

The IEPM urges the Commission to adopt the highest rates bid for the QF entitlements as the STEO and standard rates. According to the IEPM, if the Commission received a linked bid with an entitlement price higher than the entitlement price in the accepted linked bid, then the Commission should use the higher entitlement price to set the STEO and standard rates. The IEPM argues that the highest entitlement bid should be used to set the STEO and standard rates because:

- 1) The market value of the QF entitlements is the highest bid received for the QF energy and capacity; and
- 2) Basing Chapter 360 rates on the highest bid received for the QF entitlements is consistent with prior Commission practice.

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<sup>2</sup> In its February 19, 2002 filing, the IEPM did not indicate that it was objecting to the proposed standard rates as well. However, in subsequent filings it referenced both the STEO and standard rates. Therefore, for purposes of our analysis, we will assume that it is objecting to both sets of rates.

The IEPM dismisses our prior finding in our recently concluded standard-offer proceeding (Docket 2001-399) that the accepted bid for the entitlements does represent the market value of the entitlements, stating that, “[t]his conclusion was based on unsubstantiated statements made by CMP.” IEPM Comments at 2. Finally, the IEPM argues that using the highest entitlement bid to set the STEO and standard rates would be consistent with our decision in Docket No. 2000-10 where we chose to use the highest stand-alone bid price, rather than the accepted linked price, as the basis for these rates.

B. CMP’s Response<sup>3</sup>

CMP urges the Commission to approve the STEO and standard rates filed by it on January 15, 2002. CMP argues that Chapter 360 sets a presumption that the entitlement sale prices will be used to set the STEO and standard rates. It suggests that

parties may overcome this presumption by showing that either (1) the rates are not reasonably representative of wholesale costs of energy and capacity in Maine or (2) the rates are otherwise inconsistent with law.

CMP Response at 2.

According to CMP, the IEPM has not met the burden of proof on either point. CMP argues that the Commission has already determined that the price obtained for the entitlements was representative of their market price and that based on the language in our Order on Reconsideration in the standard offer proceeding (Docket No. 2001-399), the IEPM is wrong in its assertion that the Commission based this finding on unsubstantiated statements made by CMP. CMP further suggests that if, in fact, the Commission did receive higher bids for the QF entitlement output, we probably had a sound reason for not accepting them. CMP points out that there are at least two possible reasons for rejecting a linked bid with a higher entitlement price: (1) the corresponding standard offer rate would have been unreasonably high or (2) the rejected bid may have had conditions attached to the bid that could change the nature of the product being sold (for example if a bidder required that the utilities provide financially firm power rather than unit-contingent entitlements).

CMP notes that Chapter 360 does not require that the highest bid, regardless of its contingencies, be used to set the STEO and standard rates, but rather that the entitlement price be used, unless it is not reasonably representative of wholesale rates. CMP argues we have already determined that the entitlement prices are reasonably representative of wholesale rates and that the IEPM has not provided evidence to the contrary.

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<sup>3</sup> No response was received from BHE.

Finally, CMP concludes that if the IEPM cannot establish that the rates are not representative of the market, the only other reason to reject them for purposes of the STEO and standard rates would be to establish that they are not lawful. In CMP's view, the IEPM fails to raise any new arguments in addition to those already refuted in the Commission's January 11, 2002 Order on Reconsideration as to why the entitlement sale rates are inconsistent with law and thus fails on this point as well.

#### IV. DISCUSSION

Since March 1, 2000, utilities have been required to periodically re-sell their contractual entitlements to Qualifying facilities (QF) output. Most recently, in Docket No. 2001-399, we approved the sale of the entitlements to Constellation Power Source, LLC (Constellation) pursuant to a bid linked to standard-offer service. Under Constellation's bid, the price for standard-offer service over a three-year period is \$0.0495/kWh in CMP's territory and \$0.05/kWh in BHE's territory. The 3-year average price for which Constellation will purchase the entitlements is \$0.03415/kWh for CMP and \$0.03379/kWh for BHE. See, *Public Utilities Commission, Standard Offer Bidding Process*, Order on Reconsideration, Docket No. 2001-399 at 1 (January 11, 2002).

Chapter 360 sets forth the methodology for setting the STEO and standard rates and provides that the STEO rates be calculated as the energy component of the sale price for the entitlements to the utility's QF contracts, and standard rates be calculated as the sale price for the energy and capacity components of the utility's QF contracts. See, Chapter 360 §§ 4(C)(2)(b)(i) and 4(C)(3)(d)(i). While Chapter 360 allows an interested person to object to these proposed STEO and standard rates by demonstrating that the rates "are not reasonably representative of short-term wholesale energy costs in Maine or are otherwise inconsistent with law,"<sup>4</sup> we conclude that the IEPM has failed to make such a showing.

The IEPM agrees that the issue is whether the proposed rates reflect the market value of the entitlements, IEPM Comments at 2; however the IEPM asserts that the market value of the entitlements "must be determined by the highest price bid for the QF entitlements." IEPM Comments at 3. The IEPM further suggests that, "it has reason to believe that at least one other linked bid was received" that was higher than Constellation's bid. Consistent with the confidentiality of bid information, we will not comment on whether we received any bid(s) for the entitlements that were higher than Constellation's bid. We will, however, discuss the issue in the hypothetical.

We reject the IEPM's assertion that the market value of the entitlement portion of a linked bid is necessarily the highest amount bid for such entitlements. In the context of a linked bid, a bidder could bid below-market entitlement prices in order to offer

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<sup>4</sup> Chapter 360 §§ 4(C)(2)(b)(ii) and 4(C)(3)(d)(ii).

below-market standard offer prices. However, bidders could also bid strategically higher standard offer prices so as to provide a higher bid for the entitlements.<sup>5</sup> This is one reason that the IEPM's assertion that the highest bid, by definition, equals the market price of the entitlements, is flawed. Theoretically, bidders could manipulate their prices in either direction. However, we found in Docket No. 2001-399 that the winning bid was not the result of this type of price manipulation. We noted, in fact, that

during the bid process, bidders were informed that the Commission would not accept bids structured in this way. On the contrary, bidders were specifically asked to bid prices for the entitlements that reflected their stand-alone value. In our view, this is what occurred with the winning bid.

Order on Reconsideration at 4. We further discussed the basis for our determination that the accepted bid for the utility entitlements reflects the market value of the entitlements.

In determining whether a bid is consistent with the market value of the entitlements, it is essential to recognize the nature of the product being sold. The entitlements provide "unit-contingent" power, delivered only on an as-available basis. The value of this product is lower than the firm, or system power that is often traded in the bilateral market and which forward prices typically reflect. Therefore, it is reasonable to expect that the bid prices for the entitlements will be lower than the forward prices. This relationship was confirmed during the stand-alone entitlement auctions that were conducted in 1999. These auctions resulted in bids for the entitlements that were approximately 85% of the forward prices. The entitlement prices we accepted in this case were relatively higher priced at approximately 90% of the forward prices. Based on our view of the value of "unit contingent" power relative to the value of system power, and the forward prices at the time we selected the winning bidder, it is our judgment that the accepted bid price for the utility entitlements in the recent solicitation is consistent with their stand-alone market value.

*Id.*

As this quote reflects, in 1999, the auction produced stand-alone bids for the entitlements that were approximately 15% less than the forward prices at that time.

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<sup>5</sup> The IEPM, in its exceptions, indicated that it could think of no reason why a bidder would use the latter strategy. While we agree that pricing both products higher than market is not **the** strategy most likely to be used by bidders, there are instances where a bidder might use it. For example, if a bidder plans to be a CEP in that service territory, it might bid a higher standard offer price in order to create a higher ceiling against which to price.

Such a discount was not surprising as the availability of power from the entitlements depends on the physical and contractual availability of particular units whereas the forward price market is generally based on system power that is not tied to the operation of any particular facility. The bid we accepted most recently for the sale of the entitlements was linked to the standard-offer service but reflected only a 10% discount from the forward prices. Therefore, because a discount from the forward prices was expected and because the entitlement price in the linked bid that we most recently accepted was actually closer to the forward prices than the highest stand-alone bid received in the previous solicitation, we found the entitlement price in the linked bid to be consistent with the entitlements' stand-alone market value.

While the IEPM seeks to discard our prior holding that the entitlement sales prices do reflect their market value by asserting that our conclusion was based on "unsubstantiated statements made by CMP," the Order on Reconsideration makes clear that our conclusion was based on our own analysis of the bids relative to the forward prices, our experience in conducting and reviewing electricity sale processes as well as our general knowledge of power markets and the nature of the product being sold. Having already determined that the accepted entitlement bid reflects the market value of the product offered, we will not reexamine this conclusion on the basis of IEPM's erroneous claims in this proceeding that our prior holding was based on unsubstantiated hearsay.

An additional consideration in rejecting the IEPM's assertion that the highest bid reflects the market value of the entitlements is that a determination of market value requires consideration of variables other than price. For example, even if the overall price of two bids is equal, other factors could cause differences in the value and risks to ratepayers (as in CMP's example where one bid requires a financially firm product). Therefore, we also reject IEPM's assertion that the highest bid for the entitlements necessarily defines their market value because this assumption fails to take into account the effect of other variables.

Further, we reject IEPM's argument that using the highest bid received would be consistent with Commission precedent set in Docket No. 2000-10. We do not agree that this case is governed by our holding in Docket No. 2000-10. In that case, we based the STEO and standard rates on the highest *unlinked* bid. We found, in that instance, that the linked price may have reflected a reduced value for the QF output by benefiting ratepayers with a low standard offer bid. However, that case does not stand for the proposition that the Commission should set the STEO rates at the highest linked entitlement bid when the Commission has determined that the accepted bid is representative of the market price.

Finally, for generators who are paid STEO, the accepted bid may actually provide revenue above what they might otherwise receive from the market. Under Chapter 360, STEO rates are to be set as "the sale prices accepted pursuant to the sale of the rights

to the *energy component*' of the entitlements. Chapter 360, § 4(C)(2)(b)(i) [emphasis added]. However, Constellation's bid was structured as a single, monthly per-kWh price and did not break the energy component out separately. Therefore, generators who are paid STEO rates will be paid for all components included in Constellation's bid (e.g., energy and capacity) rather than just the energy component as described in Chapter 360.

For the reasons stated above, we conclude that the IEPM has failed to demonstrate that the proposed STEO and standard rates are inconsistent with the market prices in Maine or that they are inconsistent with law. Accordingly, we hereby adopt the rates filed by CMP and BHE as the STEO rates for the period March 1, 2002 through February 28, 2003 and as the Standard rates for Capacity and Energy Purchases for the period March 1, 2002 through February 28, 2005, pursuant to Chapter 360.

Dated at Augusta, Maine, this 5<sup>th</sup> day of April, 2002.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director Administrative Director

COMMISSIONERS VOTING FOR:      WELCH  
   DIAMOND  
   NUGENT

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.